IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 193 OF 2007
IN
CRIMINAL REVISION APPLICATION NO. 33 OF 2007

SHRI. SUBHASH NAIK ... Applicant
Versus
STATE THROUGH PUBLIC PROSECUTOR ... Respondent

Mr. Shivan Dessai, Advocate for the Applicant.
Ms. Winnie Coutinho, Public Prosecutor for the Respondent.

Coram:- N. A. BRITTO, J.

Date:- 21st August, 2007

P.C.:-

Heard Mr. Shivan Dessai, the learned Counsel on behalf of the Applicant/Accused.

The learned Counsel has referred to Section 11 of the Probation of Offenders Act, 1958(Act, for short) and has placed reliance on Chhanni v. State of U.P.((2006) 5 SCC 396) contending that the provisions of Section 11 of the Act would prevail over Section 362 of the Code of Criminal Procedure, 1973.

An order under the Probation of Offenders Act, 1958 can be made by the trial Court or by the High Court or any other Court when the Court is seized with the matter either in appeal or in revision. After the Judgment of this Court dated 3-8-2007 this Court has become functus officio and therefore cannot now deal with the plea of the Applicant that the Applicant be dealt with under one or the other provisions of the Probation of Offenders Act, 1958.

That is the view held by this Court in an unreported Judgment dated 23-11-2006 in Criminal Miscellaneous Application No.373 of 2006 in the case of Shri Prakash B. Borkar v. Shri Sukhalal Kumar:-

> "Secondly, only because the complainant has subsequently received the compensation ordered to be paid by the accused, the Judgment cannot be reviewed. This Court has become functus officio after pronouncing the Judgment dated 23-8-2006 and the same cannot be reviewed, as sought by the accused in prayer(a) of the application for any reasons whatsoever except as contemplated by Section 362 of the Code. I have my respectful agreement with the observations of the learned Single Judge of Allahabad High Court in Chhotey Singh and others v. State of Uttar Pradesh(supra) that an application for compounding, assuming that there was one before this Court, could be entertained only while the appeal was pending and cannot be entertained after the disposal of the appeal".

That is also the view of the Apex Court in several of its decisions, the last being the case of Mohd. Yaseen v. State of U.P.(2007 AIR SCW 4725).

Application dismissed.

N. A. BRITTO, J.

RD.